

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket Nos. 13-91-0299—0303; & 2015-091-01182C—01187C

United Properties Inv. Co. LC,
Appellant,
vs.
Warren County Board of Review,
Appellee.

Introduction

This appeal came on for written consideration before the Property Assessment Appeal Board (PAAB) on May 20, 2016. Attorney Jess Vilsack of Nyemaster Goode, P.C., Des Moines, represented United Properties Inv. Co. LC. County Assessor Brian Arnold represented the Warren County Board of Review.

United Properties is the owner of several vacant properties located on Masteller Road, Norwalk. It protested five parcels for the 2013 assessment; and added a sixth parcel for the 2015 assessment. The properties were all classified commercial realty. The properties addresses, parcel numbers, and 2013 and 2015 assessments are set forth in the table below.

Year Protested	Address	Parcel	2013 Assessment	2015 Assessment
2013 & 2015	189 Masteller	63-400-06-0663	\$45,700	\$45,700
2013 & 2015	191 Masteller	63-400-06-0664	\$61,000	\$61,000
2013 & 2015	193 Masteller	63-400-06-0666	\$76,200	\$76,200
2013 & 2015	N/A	63-400-06-0669	\$39,600	\$39,600
2013 & 2015	N/A	63-400-06-0670	\$186,000	\$186,000
2015	195 Masteller	63-400-06-0662	N/A	\$76,200

United Properties protested to the Board of Review and claimed the properties were misclassified and their proper classification is as residential real estate under Iowa Code section 441.37(1)(a)(1)(c). It also asserts over assessment under section 441.37(1)(a)(1)(b). The Board of Review denied the petitions.

United Properties then appealed to PAAB.

Findings of Fact

Parcels 63-400-06-0663; 63-400-06-0664; 63-400-06-0669; and 63-400-06-0670

United Properties has previously appealed the properties identified as parcels 63-400-06-0663; 63-400-06-0664; 63-400-06-0669; and 63-400-06-0670 to PAAB in 2011. In the 2011 assessment appeals, PAAB determined the proper classification of the properties was as residential realty as the property currently had no commercial use and had only previously been used for residential purposes. It further ordered the classification should remain the same until the property was developed with a commercial use. The Board of Review appealed this decision to the district court, which affirmed PAAB's order regarding whether the Board of Review had appropriate notice of United Properties' claims. It further noted the evidence supported PAAB's findings. The Iowa Court of Appeals affirmed the district court's order. We, therefore, address these properties first, as they were previously adjudicated.

United Properties contends the assessments of the subject properties were previously adjudicated as residential realty by PAAB in 2011. At the time it protested the 2013 and 2015 assessments, an appeal, filed by the Board of Review, was still working its way through judicial review in the courts. United Properties asserts that no improvements have been made to the properties since the 2011 assessment.

The Warren County Board of Review filed a letter of explanation, authored by Assessor Brian Arnold. (Ex. A). Arnold explains that he disagrees with PAAB's previous ruling regarding how zoning impacts classification. Arnold states that the subject properties' commercial zoning prohibits future construction of a residential property. A letter from the Norwalk City Planner, Luke Parris, notes that the subject properties are located in a Commercial Office District, which does not permit the

construction of single-family homes. (Ex. C). He further confirms that if a non-conforming structure is destroyed or damaged to an extent of 60% or more of its replacement cost, it cannot be reconstructed. (Ex. C).

Parcels 63-400-06-0662 and 63-400-06-0666

United Properties first appealed the property identified as parcel 63-400-06-0666 in 2013. It also appealed this parcel's assessment in 2015. Its site is 0.5 acres and is unimproved. From the property record cards, it appears whatever improvement was previously on the property was removed in between the 2011 and 2012 assessments. No new improvements are indicated on the property record card. It was reclassified from residential to commercial in 2012.

United Properties also first protested parcel 63-400-06-0662 in 2015. Its site is 0.5 acres and is unimproved. From the property record card, it appears whatever improvements were previously assessed; they were removed between the 2014 and 2015 assessments. No new improvements are indicated on the property record card. It was reclassified from residential to commercial in 2015.

United Properties apparently believes these properties should bear the same residential classification because their circumstances mirror those of the previously adjudicated parcels.

The Board of Review, likewise, believes the properties are correctly classified as commercial realty.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount.

§§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted. *Id.* Even if the burden is not shifted, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

Parcels 63-400-06-0663; 63-400-06-0664; 63-400-06-0669; and 63-400-06-0670

This case involves an ongoing dispute between United Properties and the Board of Review regarding the subject properties' correct classification. In our decision regarding the 2011 assessment, based on applicable statutory and administrative law, PAAB determined four of these properties were properly classified as residential realty. The Board of Review then challenged PAAB's final agency action through judicial review to the district court and Iowa Court of Appeals. The Court of Appeals, like the district court, affirmed PAAB's final agency action. The properties were again classified commercial in the 2013 and 2015 assessments; however, this was before the Court of Appeals' ruling was issued.

The only issue now before PAAB regarding the classification of these four previously adjudicated parcels is whether the Board of Review has shown a change in the use of the properties between the date PAAB previously adjudicated it as residential realty and the 2013 or 2015 assessment dates. The Iowa Supreme Court has ruled "[a] classification in one year is competent and persuasive evidence of the proper classification in a subsequent year." *Cott v. Bd. of Review of City of Ames*, 442 N.W.2d 78, 81 (Iowa 1989). Further, "[w]hen it is admitted that the use of the real property is the same as it was in the prior years when the court adjudicated its classification, there is a strong presumption that no change has occurred. The court should not be obligated to reexamine the same facts again and again. A condition once shown may be presumed to continue until the contrary is shown." *Id.* In this case, PAAB determined, and the

courts affirmed, the proper classification of the properties for the 2011 assessment year was residential. Because the issue was previously adjudicated and the property was found to be residential, in this case, the Board of Review must overcome the presumption of continuity of use to justify the change in the classification. *Id.*; *Colvin v. Story County Bd. of Review*, 653 N.W.2d 345 (Iowa 2002). “[T]he presumption is an evidentiary one.” *Colvin*, 653 N.W.2d at 349.

Based on the record as a whole, the Board of Review fails to convince PAAB the properties’ *actual use* has changed since 2011. The record shows the properties are still undeveloped and contain no improvements as evidence by the valuations set forth on the property record cards, which include no value for improvements. Although the Board of Review argues that zoning precludes a residential dwelling from being constructed on the property in the future, it is likewise reasonable to conclude that any commercial use is still speculative at this time. Moreover, the implications of zoning are not the actual use of the property. There simply is no apparent current use of the property. Even if PAAB were to consider zoning as the Board of Review argues, to classify the property as commercial realty at this time would contemplate its highest and best use, rather than its current use. Considering this, PAAB continues to hold that following the demolition of the residences on the property, the property should remain classified as residential realty until such time improvements are constructed on the property.

Parcels 63-400-06-0662 and 63-400-06-0666

Because Parcels 63-400-06-0662 and 63-400-06-0666 were not previously adjudicated, no such presumption attaches. Rather, United Properties bears the burden of showing the current commercial classification is incorrect and that the properties meet the requirements of its desired residential classification.

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. See Iowa Admin. Code Ch. 701-71.1. The assessor shall classify property according to its present use. *Id.* Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id.*

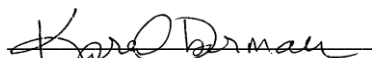
Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id.* r. 701-71.1(2). There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. Iowa Admin. r. 701-71.1(1). Residential real estate shall include all land and buildings which are primarily used or intended for human habitation. Iowa Admin. R. 701-71.1(4). As evidenced by the information contained in the property record card (PRC) for these parcels, there is no current commercial use on the properties as there is no improvement value listed on the PRCs. Because we find there is no actual, present commercial use of the subject properties, we find the parcels should remain residentially classified until their use changes.

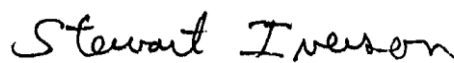
Order

IT IS THEREFORE ORDERED that the Warren County Board of Review’s action is modified. Within 30 days of the date of this Order, the Warren County Board of Review, through the Warren County Assessor, shall file with PAAB the corrected assessed values of these parcels as residential realty for the 2013 and 2015 assessment years.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

Dated this 22nd day of July, 2016.


Karen Oberman, Presiding Officer


Stewart Iverson, Board Chair

Copies to:

Jess Vilsack by eFile

Warren County Board of Review by eFile

Auditor